

AO 240 (Rev. 6/86) Application to Proceed

United States District Court

WESTERN

DISTRICT OF

PENNSYLVANIA

JOHN BAX

'06 OCT 12 A10:53

WARDEN, FCI MCKEAN

CLERK
U.S. DISTRICT COURTAPPLICATION TO PROCEED IN
FORMA PAUPERIS, SUPPORTING
DOCUMENTATION AND ORDER

CASE NUMBER: 05-194(ERIE)

CLERK
U.S. DISTRICT COURTI, JOHN BAX, declare that I am the (check appropriate box)☒ petitioner/plaintiff☐ movant (filing 28 U.S.C. 2255 motion)☐ respondent/defendant☐ _____
other

in the above-entitled proceeding; that, in support of my request to proceed without being required to prepay fees, cost or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or give security therefor; that I believe I am entitled to relief. The nature of my action, defense, or other proceeding or the issues I intend to present on appeal are briefly stated as follows: The Court's denial of the petition for a writ habeas corpus is clearly erroneous. The claim raise clearly demonstrates that Petitioner was actually innocent of the conduct used to enhance his sentence. The actual innocence provisions promulgated in In Re Dorsainvil, 119 F.3d 245, 251 (CA 3, 1997), also support Petitioner's claims as it specifies that extraordinary circumstances constitutes a rubric of inadequate or ineffective remedy. Because actual innocence is an extraordinary circumstance, the fact that Petitioner's innocence implicates his sentence and not his underlying conviction, is not dispositive. Cristin v. Brennan, 281 F.3d 404, 421 (CA 3, 202). Because I am indigent, I do not have the resources to remit the cost for filing and prosecuting this matter on appeal. Hence, leave to proceed in forma pauperis is requested.

In further support of this application, I answer the following questions.

1. Are you presently employed? Yes ☒ No ☐

a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer. (list both gross and net salary)

I am currently employed as a unit orderly. This prison job assignment pay a nominal monthly stipend that varies from month to month depending on the unit budget. Attached is a Statement of my Prison Account Activity which provides a monthly account of this pay stipend.

b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or other form of self-employment Yes ☐ No ☒b. Rent payments, interest or dividends? Yes ☐ No ☒c. Pensions, annuities or life insurance payments? Yes ☐ No ☒d. Gifts or inheritances? Yes ☐ No ☒e. Any other sources? Yes ☐ No ☒

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

N/A

3. Do you own any cash, or do you have money in checking or savings accounts?

Yes ☒ No ☐ (Include any funds in prison accounts.)

If the answer is "yes," state the total value of the items owned.

4. Do you own or have any interest in any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

Yes ☐ No ☒

If the answer is "yes," describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

N/A

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10-5-06
(Date)

John B. [Signature]

Signature of Applicant

CERTIFICATE
(Prisoner Accounts Only)

I certify that the applicant named herein has the sum of \$ _____ on account to his credit at the _____ institution where he is confined. I further certify that the applicant likewise has the following securities to his credit according to the records of said institution: _____

I further certify that during the last six months the applicant's average balance was \$ _____

Authorized Officer of Institution

ORDER OF COURT

The application is hereby denied

United States Judge

Date

The application is hereby granted. Let the applicant proceed without prepayment of cost or fees or the necessity of giving security therefor.

United States Judge
or Magistrate

Date